

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELIDIA M. DUARTE,

Plaintiff,

v.

ANDREW SAUL,

Defendant.

Case No. [20-cv-00151-JCS](#)

**ORDER GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND**

Re: Dkt. No. 26

Plaintiff Elidia Duarte, who initially brought this case pro se in January of 2020, asserts a number of statutory and constitutional claims against Defendant Andrew Saul, Commissioner of Social Security (the “Commissioner”), alleging procedural and substantive errors in the Commissioner’s handling of disputes regarding Duarte’s entitlement to disability benefits. While this case was pending and the Commissioner had not yet been served, Duarte appeared for a hearing before an administrative law judge (“ALJ”) in February of 2020, but no decision has yet issued. *See* Anderson Decl. (dkt. 26-1) ¶ 6. The Commissioner filed a motion to dismiss, arguing that the Court lacks subject matter jurisdiction for failure to exhaust administrative remedies, that certain of Duarte’s claims are moot because the Commissioner has complied with her requests, and that Duarte fails to state a claim on which relief may be granted. In November of 2020, Duarte retained counsel, who filed an opposition brief on her behalf.

Duarte’s opposition brief (dkt. 30) is only loosely connected to her complaint. It does not address all of the claims actually asserted in her complaint, and includes arguments based on the Commissioner’s failure to issue a decision within ninety days after the February 2020 ALJ hearing—which is not an issue raised in the complaint because the hearing had not occurred at the time the complaint was filed. The briefing does not assist the Court in evaluating whether to dismiss each of the claims raised in the complaint.

The Court concludes that the current complaint has been superseded by events and does

1 not sufficiently put the Commissioner on notice of the claims Duarte now intends to pursue. The
2 case would benefit from a complaint prepared with the assistance of counsel, in order to align the
3 complaint with the arguments Duarte's counsel intends to pursue on her behalf. The
4 Commissioner's motion is therefore GRANTED, and the complaint is DISMISSED with leave to
5 amend. Duarte shall file an amended complaint no later than February 12, 2021. The
6 Commissioner shall answer or otherwise respond to the amended complaint no later than two
7 weeks after it is filed.

8 If the Commissioner intends to file a certified administrative record pursuant to Civil Local
9 Rule 16-5, the parties shall meet and confer to determine an appropriate deadline to do so, taking
10 into account both the existing delays of which Duarte complains and the challenges in preparing
11 the record in light of the COVID-19 pandemic. If the parties cannot agree on a deadline, they may
12 file a joint letter brief not exceeding five pages presenting their respective positions, no later than
13 three weeks after Duarte files her amended complaint.

14 The hearing on the motion to dismiss previously set for January 29, 2021 is VACATED.
15 The case management conference set for the same time is CONTINUED to 2:00 PM the same day.

16 **IT IS SO ORDERED.**

17 Dated: January 27, 2021

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20 JOSEPH C. SPERO
21 Chief Magistrate Judge
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